CHAPTER NO. 1073

HOUSE BILL NO. 2583

By Representatives Sherry Jones, Jackson, Brooks, Langster, Eckles, Pruitt, Bowers, Ferguson, Larry Turner, Brown, Brenda Turner, Hassell, Garrett, Caldwell, Beavers, Halteman Harwell, Cooper, Hargett, Fraley, Godsey, Wood, Rhinehart, Armstrong, Patton, John DeBerry, Arriola, Bird, West, Lois DeBerry, Boner, Miller, Haley, Pleasant, Scroggs, Davidson, Kernell, McDonald, Cross, Stamps, Fowlkes, Williams, Rinks, Newton, Hood, Bone, Head, Ulysses Jones, Givens, Ralph Cole, Kerr, Goins, Pinion, Phelan, Ronnie Cole, Gunnels, Tidwell, Westmoreland, McKee, Walley, Buck, Dunn, Maddox, Stulce, Mumpower, Roach, Sargent, Davis, Hicks, Ridgeway, Windle, Kisber, Tindell, Ritchie, Hargrove, Whitson, Raymond Walker, Bittle, Kent, Sharp, Boyer, Huskey, Winningham, White

Substituted for: Senate Bill No. 2699

By Senators Herron, Harper, Cooper, Cohen, Dixon, Graves, Crutchfield, Miller, Kurita, Ford, Williams, Clabough

AN ACT to enact the "Health Care Consumer Right-to-Know Act of 1998".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as the "Health Care Consumer Right-to-Know Act of 1998".

SECTION 2. (a) Health care is a valuable commodity, and the health care consumer needs to make informed decisions when making health care choices. Due to the current trends in health care, patients have a close relationship with their health care provider and must depend on the provider for most of their health care needs. Health care consumers need to know as much as possible before committing their health care to such provider. Likewise current trends make decisions about which managed care organizations to choose equally important to health care consumers. Because of the foregoing reasons and because of the increasing concerns over the quality of health care, the General Assembly finds that a system should be established to provide public access to information about certain health care providers and managed care organizations in this State.

(b) For the purposes of this act, the term "provider" or "health care provider" means a physician, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 6; osteopathic physician, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 9; chiropractor, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 4; dentist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 5; podiatrist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 3; optometrist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 8; dietitian or nutritionist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 25; physician assistant, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 19; respiratory care practitioners, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 6; pharmacist, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 10; audiologists and speech pathology therapists, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 17; a certified nurse practitioner, as such nurses are regulated pursuant to Tennessee Code Annotated, Section 63-7-123; social workers regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 23; psychologists, regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 11; and professional counselors, marital and family therapists, and clinical

pastoral therapists regulated pursuant to Tennessee Code Annotated, Title 63, Chapter 22.

SECTION 3. It shall be the duty of the division of health related boards to compile, consolidate, manage and disseminate the information collected by entities of the Department of Health and the Department of Commerce and Insurance as required by this act.

SECTION 4. (a) When collecting information or compiling reports intended to compare individual health care providers, the Commissioner of Health shall require that:

(1) Provider organizations which are representative of the target group for profiling shall be meaningfully involved in the development of all aspects of the profile methodology, including collection methods, formatting and methods and means for release and dissemination;

(2) The entire methodology for collecting and analyzing the data shall be disclosed to all relevant provider organizations and to all providers under review;

(3) Data collection and analytical methodologies shall be used that meet accepted standards of validity and reliability;

(4) The limitations of the data sources and analytic methodologies used to develop provider profiles shall be clearly identified and acknowledged, including, but not limited to, the appropriate and inappropriate uses of the data;

(5) To the greatest extent possible, provider-profiling initiatives shall use standard-based norms derived from widely accepted, provider-developed practice guidelines;

(6) Provider profiles and other information that have been compiled regarding provider performance shall be shared with providers under review prior to dissemination; provided, however, that opportunity for corrections and additions of helpful explanatory comments shall be provided prior to publication; and, provided, further, that such profiles shall only include data which reflect care under the control of the provider for whom such profile is prepared;

(7) Comparisons among provider profiles shall adjust for patient care-mix and other relevant risk factors and control for provider peer groups, when deemed appropriate by the respective board; and

(8) The quality and accuracy of provider profiles, data sources and methodologies shall be evaluated at least biannually.

(b) The Department of Health is authorized to charge a reasonable fee for any information, documents, or reports requested by the public which are not required as part of the implementation of this act. The fee shall be set per rules and regulations promulgated by the Department of Health in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 5. (a) Each board regulating a provider, as defined in Section 2(b), shall collect the following information and provide to the Department of Health in order for the department to create individual profiles on licensees, in a format created by the department that shall be available for dissemination to the public:

(1) A description of any criminal convictions for felonies and, as determined by the board, serious misdemeanors, within the most recent ten (10) years. For the purposes of this subsection, a person shall be deemed to be convicted of a crime if such person was found or adjudged guilty by a court of competent jurisdiction. Misdemeanor convictions later expunged by a court of competent jurisdiction shall be stricken from the provider's profile.

(2) A description of any final board disciplinary actions within the most recent ten (10) years, which actions shall include final board action as defined by Tennessee Code Annotated, Section 4-5-314, and reprimand action taken pursuant to a board practice act;

(3) A description of any final disciplinary actions of licensing boards in other states within the most recent ten (10) years;

(4) A description of revocation or involuntary restriction of hospital privileges for reasons related to competence or character that have been taken by the hospital's governing body or any other official action of the hospital after procedural due process has been afforded, or the resignation from or nonrenewal of medical staff membership or the restriction of privileges at a hospital taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital, all as taken pursuant to procedures promulgated by the board for licensing health care facilities. Only cases which have occurred within the most recent ten (10) years shall be disclosed by the Department of Health to the public;

(5) All medical malpractice court judgments, all medical malpractice arbitration awards in which a payment is awarded to a complaining party and all settlements of medical malpractice claims in which a payment is made to a complaining party beginning with reports for 1998 and each subsequent year; provided, such reports shall not be disseminated beyond the most recent ten (10) year period, but shall include the most recent ten (10) year period for which reports have been filed. Each provider licensing board shall set by rule adopted pursuant to Tennessee Code Annotated, Title 4, Chapter 5, a threshold amount below which judgments or settlements shall not be reportable; provided such thresholds shall not exceed the lesser of seventy-five thousand dollars ($75,000), or a median of settlements in the last ten (10) years relative to that profession. Dispositions of paid claims shall be reported in a minimum of three (3) graduated categories indicating the level of significance of the award or settlement. Information concerning paid medical malpractice claims shall be put in context by comparing an individual licensee's medical malpractice judgment awards and settlements to the experience of other providers within the same specialty. Information concerning the existence of a court-sealed settlement shall be reported in cases involving such a settlement. Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the provider. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred." Nothing herein shall be construed to limit or prevent the Department of Health from providing further explanatory information regarding the significance of categories in which settlements are reported.

Pending malpractice claims shall not be disclosed by a board to the public. Nothing herein shall be construed to prevent a board from investigating

and disciplining a licensee on the basis of medical malpractice claims that are pending.

(6) Names of medical schools or professional and training schools and dates of graduation;

(7) Graduate medical education or other graduate-level training;

(8) Specialty board certification as determined by the relevant board;

(9) Names of the hospitals where the licensee has privileges;

(10) Appointments to medical school faculties and indication as to whether a licensee has a responsibility for graduate medical education within the most recent ten (10) years;

(11) Information regarding publications in peer-reviewed medical literature;

(12) Information regarding professional or community service associations, activities and awards;

(13) The location of the licensee's primary practice setting;

(14) The identification of any translating services that may be available at the licensee's primary practice location;

(15) An indication of which managed care plans in which the licensee participates;

(16) An indication of TennCare plans in which the licensee participates; and

(17) No information that is otherwise privileged under Title 63, and which is generated by any peer review program, provider health program, or impaired professionals program operated or administered by a provider association or foundation that such association has created for peer review purposes, shall be included in any profile unless such information is not contemplated by the particular Title 63 statute as being privileged.

(b) Each board shall provide individual licensees with a copy of their profiles prior to release to the public. A licensee shall be provided a reasonable time to correct factual inaccuracies that appear in such profile.

(c) A provider may elect to have his or her profile omit certain information provided pursuant to subdivisions (10) to (12), inclusive, concerning academic appointments and teaching responsibilities, publications in peer-reviewed journals and professional and community service awards. In collecting information for such profiles and in disseminating such profiles, each board shall inform providers that they may choose not to provide such information required pursuant to subdivision (10) to (12), inclusive.

(d) The Department of Health shall develop formats for dissemination of such information to the public, which at a minimum shall include electronic media, including the World Wide Web of the Internet, and a toll-free telephone line.

(e) On or before January 1, 1999, the division of health related boards of the Department of Health shall become a participant in the national practitioners databank.

SECTION 6. The District Attorney General for any court in which an unlicensed provider is convicted of holding himself out as a licensed provider shall, within one (1) week thereafter, report the same to the relevant board together with a copy of the court proceedings in the case.

SECTION 7. The Department of Health, in implementing the provisions of Section 5 shall not disseminate a provider profile by electronic media, including the World Wide Web of the Internet or toll-free telephone line before May 1, 1999. The department shall conduct a study of the impact of publication of provider profiles by electronic media on the personal safety of providers and their families, and shall report its findings to the government operations committee on or before October 1, 1998. The department shall include in such report a sample profile designed with safeguards recommended by the department pursuant to the aforementioned study. No later than January 1, 1999 and after public hearing, the board shall promulgate regulations to eliminate, to the extent practicable, the possibility that certain information contained in such profiles may jeopardize that personal safety of providers and their families.

SECTION 8. The Department of Health shall assess boards of providers which they regulate for the costs reasonably associated with providing the services and information pursuant to this act. Further, the Department of Health shall provide the cost to the Department of Commerce and Insurance which is associated with providing the services and information relative to the Board of Pharmacy and Managed Care Organizations. The Department of Commerce and Insurance shall assess the cost to the providers which they regulate. These costs shall be assessed in compliance with Tennessee Code Annotated, Section 4-3-1011 and Tennessee Code Annotated, Section 56-1-310.

SECTION 9. Funds appropriated for the purpose set forth in this act or generated by this act shall not revert to the general fund on June 30 of any given fiscal year nor shall such funds be expended for any purpose other than those purposes set forth in this act.

SECTION 10. (a) Managed care organizations regulated pursuant to Tennessee Code Annotated, Title 56, Chapter 32, shall provide an accurate listing of provider information as required by this act to the Department of Health.

(b) A managed care organization shall report any addition or deletion of a provider from its panel of contracted members within twenty-one (21) business days of the date on which the managed care organization receives notice of the addition or deletion of a provider. The department shall cross-reference the change with the existing provider profile within seven (7) days of receipt of the information.

(c) The Department of Commerce and Insurance, to the extent to which it already collects the data required by this act, shall forward the existing data and all subsequent data to the Department of Health in such manner as the Commissioner of Health shall direct after consultation with the Commissioner of Commerce and Insurance.

SECTION 11. (a) The annual report required by Tennessee Code Annotated, Section 56-32-210(4), and information required for a profile by this section shall be made available to consumers by the Department of Health through the World Wide Web of the Internet or a toll-free telephone line. Such information shall be made available by May 1, 1999, and shall be updated by May 1 of each succeeding year.

(b) The information made available by the Department of Health pursuant to subsection (a) shall be based on reports filed with the Department of Commerce and Insurance pursuant to Tennessee Code Annotated, Section 56-32-210, and shall include, to the extent practicable, the following:

(1) A description of the grievance review system;

(2) The total number of grievances handled through such grievance review system, and a compilation of the causes underlying the grievances filed;

(3) The ratio of the number of adverse decisions issued to the number of grievances received;

(4) The ratio of the number of successful grievance appeals to the total number of appeals;

(5) The average of:

(A) The number of enrollees at the beginning of the calendar year; and

(B) The number of enrollees at the end of the calendar year; and

(6) The number, amount and disposition of malpractice claims made by enrollees that resulted in settlements, court judgements and arbitration awards by the plans during the calendar year.

(c) For each year the reports are filed, the information described in subdivision (b)(2) through (b)(6) shall be shown for a period of five (5) consecutive calendar years. The information for more than five (5) calendar years shall not be required.

(d) The profile of managed care organizations regulated pursuant to Tennessee Code Annotated , Title 56, Chapter 32, maintained by the department shall include:

(1) The number of years in existence;

(2) A summary of the financial information, including profits or losses, as reported by the plan in its annual statement filed with the Commissioner of Commerce and Insurance;

(3) The geographic plan area for the plan is authorized;

(4) The composition of the provider network, including names, addresses and specialties of providers;

(5) Identification of those providers that have notified the plan that they are not accepting new patients;

(6) Measures of quality and consumer satisfaction if the Commissioner of Health determines by rule that such measures are valid and comparable among organizations;

(7) The certification and accreditation status of the organization, if any;

(8) Procedures governing access to specialists and emergency care services; and

(9) The information voluntarily submitted by the managed care organization to the Commissioner of Health relative to consumer satisfaction and quality standards or measures.

SECTION 12. (a) Hospitals regulated pursuant to Tennessee Code Annotated, Title 68, Chapter 11, shall provide an accurate listing of information as required by this act to the Department of Health.

(b) The information which the Department of Health shall disseminate shall include, but not be limited to:

(1) The corporate form of the facility, including whether the facility is publicly or privately owned, whether the facility is not-for-profit or for-profit, the nature of the ownership and management, and its affiliations with other corporate entities;

(2) Health care plans accepted by the hospital;

(3) Accreditation status; and

(4) The specialty programs, which meet the guidelines, established by the specialty societies or other appropriate bodies as determined by the Commissioner of Health.

SECTION 13. A provider who makes an intentional misrepresentation when providing information to the Department of Health that the department uses in a provider profile commits a violation of the practice act under which the provider is licensed or certified.

SECTION 14. (a) The initial development of a system for the collection and dissemination of information as provided under this act shall be contracted to an appropriate service provider by the department under compliance with the provisions of Tennessee Code Annotated, Title 12, Chapters 3 and 4. The cost of such contract shall be paid from fees collected from providers regulated by the division of health related boards.

(b) In disseminating information under this act, the Department of Health is directed to use the department's existing toll-free telephone resources. The creation of an additional toll-free telephone line is not required by this act.

SECTION 15. Under the provisions of this act, the Department of Health only compiles information. The department shall not vouch for or assert the accuracy of any information it disseminates under this act. Before the department disseminates information to consumers under this act, the department shall permit each provider, hospital, or managed care organization, whose information is to be disseminated, the opportunity to review and correct any information the department proposes to disseminate. The department shall not be subject to any suit for damages concerning any information which the department disseminates that a provider, hospital, or managed care organization had the opportunity to correct, but did not correct.

SECTION 16. No provision of this act shall be construed as restricting the status of any record as a public record for the purposes of Tennessee Code Annotated, Title 10, Chapter 7.

SECTION 17. (a) Each licensed provider, as defined in Section 2(b) of this act, must provide the information required by this act to be compiled into provider profiles by the Department of Health.

(b) Each provider, as defined in Section 2(b) of this act, seeking licensure must provide the information required by this act before licensure will be granted.

(c) Before the issuance of the licensure renewal notice, the Department of Health shall send a notice to each licensed provider at the provider's last known address of record with the department regarding the requirements for information to be submitted by such provider pursuant to this act.

(d) Each provider who has submitted information pursuant to this act must update that information in writing by notifying the Department of Health within thirty (30) days after the occurrence of an event or the attainment of a status that is required to be reported.

(e) Failure by a provider to comply with these requirements to submit information and to update information constitutes a ground for disciplinary action under the respective practice act for that profession. For such failure to comply, the department or board may:

(1) refuse to issue a license to any provider applying for initial licensure who fails to submit or update the required information; and/or

(2) refuse to renew a license to any provider who fails to submit or update the required information; and/or

(3) process any licensed provider before the board who fails to submit and/or update the required information for formal disciplinary action and may assess a penalty against the provider of up to fifty dollars ($50.00) for each day that the provider is not in compliance with this subsection.

SECTION 18. Failure to comply with the requirements of this act by a person or entity required to submit or report information as required by this act constitutes a violation of the relevant practice or licensing statute and subjects the violator to appropriate enforcement or disciplinary action.

SECTION 19. The Commissioner of Health is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 20. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 1, 1998

JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 19th day of May 1998

DON SUNDQUIST, GOVERNOR